

Message Text

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PAGE 01 NOUAKC 02470 242118Z
ACTION OC-06

INFO OCT-01 AF-10 ISO-00 CCO-00 PASO-00 /017 W
-----099923 242125Z /64/44

O 240935Z AUG 78
FM AMEMBASSY NOUAKCHOTT
TO SECSTATE WASHDC IMMEDIATE 0280

UNCLAS NOUAKCHOTT 2470

C O R R E C T E D C O P Y-CLASSIFICATION UNCLASSIFIED VICE
LIMITED OFFICIAL USE AND FOR FOOTNOTE.

FOR OC FROM AMBASSADOR

E.O. 11652: N/A
TAGS: EIND, MR
SUBJECT: TRANSMITTAL OF IMPORTANT COMMERCIAL MESSAGE

REF: 77 STATE A-4708

1. PLEASE PASS FOLLOWING MESSAGE TELEGRAPHICALLY RPT TELE-
GRAPHICALLY TO INTERNATIONAL SYSTEMS AND CONTROLS CORPORA-
TION (ISC) HOUSTON, TEXAS, TELEX 426 260. IT IS
IMPORTANT THAT MESSAGE REACH ADDRESSEE DURING THE BUSINESS
DAY AUGUST 24. FYI MESSAGE PROVIDES POSSIBLE RESOLUTION OF
LONG-STANDING DISPUTE BETWEEN GOVERNMENT OF MAURITANIA AND
THE AMERICAN FIRMS OF ISC AND LANG INCORPORATED. IN RECENT
MONTHS DISPUTE HAS TAKEN ON POLITICAL OVERTONES WHICH COULD
AFFECT BILATERAL RELATIONS. END FYI. THE MESSAGE FROM
ED OLIPHANT, PRESIDENT OF PRITCHARD INC. READS AS FOLLOWS:

2. QUOTE:

ATTENTION GENE BLADES/HERMAN FRIETSCH
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RE. SUGAR REFINERY NOUAKCHOTT

RIM ARE DISCUSSING TWO APPROACHES TO SOLVING SUGAR REFINERY PROB-
LEM. ONE IS TO ABORT PROJECT AND TO PROCEED TO INTERNATIONAL
ARBITRATION AGAINST ISC/LANG. SECOND IS TO NEGOTIATE AMICABLE
TERMINATION OF LANG CONTRACT AND TO HIRE PRITCHRD OR SOME THIRD
PARTY CONTRACTOR TO COMMISSION AND START-UP PLANT. BELIEVE IT

WILL BE POSSIBLE TO CONVINCE RIM TO GIVE ISC/LANG FULL AND DEFINITIVE RELEASE UNDER EXISTING CONTRACT IN EXCHANGE FOR ASSUMPTION BY LANG OF COMMISSIONING COSTS ESTIMATED AT DOLLARS 737.000 AND WAIVER OF ANY CLAIMS TO RETENTIONS, ESSENTIALLY AS PER BLADES LETTER TO MINISTER.

PRITCHARD WOULD THEN ENTER INTO NEW CONTRACT WITH RIM TO COMPLETE START-UP WITH DOLLARS 737.000 PROVIDED BY ISC/LANG AND TO PROVIDE LONG TERM MANAGEMENT SERVICES ON COST-PLUS BASIS. PRITCHARD WOULD ASSUME LIABILITY FOR PERFORMANCE GUARANTEES, WITH ISC FREE AND CLEAR VIS-A-VIS RIM.

FOREGOING SCENARIO, ASSUMING WE CAN CONVINCE RIM TO GO ALONG. WITHOUT REQUIRING SUBSTANTIAL PAYMENT IN NATURE OF LIQUIDATED DAMAGES FOR WHAT THEY VIEW AS BREACH, INsofar AS RELATIONSHIP WITH PRITCHARD IS CONCERNED WOULD PROVIDE ISC WITH TWO OPTION:

AA. CONTINUE UNDER CURRENT ARRANGEMENTS WHEREBY ISC PAYS EXISTING PROJECT OBLIGATIONS (SOME DOLLARS 770.000 COUNTING MAURITANIAN PAYABLES AS PER SCHEDULE IN SALES AGREEMENT) PLUS ACTUAL PRITCHARD COMMISSIONING COSTS (ESTIMATED DOLLARS 737.000) MINUS POSSIBLE RETENTION RECOVERY UP TO MAXIMUM DOLLARS 1.150.000. ISC WOULD THUS FACE MAXIMUM EXPOSURE OF DOLLARS 1.500.000, MINIMUM OF DOLLARS 400.000 IN UNLIKELY EVENT ALL OF RETENTION IS COLLECTED AND WOULD MAINTAIN UNDERTAKING TO HOLD PRITCHARD HARMLESS AGAINST UNCLASSIFIED

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COST OVERRUNS. LANG RESPONSIBILITY FOR PERFORMANCE GUARANTEES WOULD CONTINUE.

BB. ALTERNATIVELY, ISC CAN RENOUNCE OFF-SET, THROUGH RETENTION RECOVERY, OF ITS OBLIGATION TO PRITCHARD, PAY PRITCHARD'S COMMISSIONING COSTS OF DOLLARS 737.000, AND BE RELEASED FROM ANY FURTHER CONTINGENT LIABILITIES UNDER THE EXISTING CONTRACT. UNDER THIS OPTION ISC WOULD RETAIN RESPONSIBILITY ONLY FOR KUEHNE AND NAGEL LAW SUIT AND FOR CLAIMS AGAINST LANG BY MAURITANIAN CREDITORS, AND ALL FURTHER WORK ON PROJECT WOULD BE IN NAME OF PRITCHARD. IN RELATION TO OPTION AA, THIS MEANS BASICALLY THAT ISC WAIVES POSSIBLE RETENTION RECOVERY IN EXCHANGE FOR ASSUMPTION BY PRITCHARD OF U.S. PAYABLES WITH EXCEPTION OF KUEHNE AND NAGEL, PLUS COMPLETE RELEASE OF ISC UNDER RIM CONTRACT GUARANTEES. RIM OR PRITCHARD WOULD NEED TO RECEIVE DOLLARS 737.000 IN RELATIVELY SHORT ORDER.

EITHER ONE OF ABOVE APPROACHES ALLOWS US TO PROCEED WITH NEGOTIATION OF TERMINATION OF LANG CONTRACT. UNDER OPTION AA ISC RETAINS RESIDUAL CONTINGENT LIABILITY FOR PERFORMANCE GUARANTEES, UNDER OPTION BB ISC IS ENTIRELY OUT OF PROJECT WITH NO CONTINGENT LIABILITY FOR PLANT PERFORMANCE.

THIRD ALTERNATIVE, SEEMINGLY LEAST DESIREABLE, WOULD BE FOR LANG/
ISC TO DECLINE RIM OFFER OF NEGOTIATED TERMINATION, ALLOWING
PROJECT TO FOLD. ISC WOULD THEN FACE LIABILITY
FOR CURRENT PAYABLES, PLUS IMMINENT CONTINGENT LIABILITY
FOR RIM ARBITRATION CLAIM IN SUBSTANTIAL AMOUNT.

WE URGENTLY REQUIRE TELEX INDICATION FROM ISC ON HOW TO PROCEED.
HAVE OPPORTUNITY TO REACH COMPREHENSIVE SETTLEMENT LEADING
TO RELEASE IN FAVOUR OF ISC, BUT REQUIRE ON BEHALF OF PRITCHARD
YOUR ASSENT AS TO OPTION AA OR BB ABOVE. NATURALLY NO ABSOLUTE
COMMITMENT TO BE MADE PRIOR APPROVAL IN HOUSTON. PLEASE ADVISE
SOONEST.

RETURNING TO KANSAS CITY ON SATURDAY.
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ED OLIPHANT
END QUOTE KRYZA

NOTE BY OC/T: CLASSIFICATION CHANGED TO UNCLASSIFIED PER
BOB LOCHMILLER OC/AF

NOTE BY OC/T: PASSED TO ABOVE ADDRESSEE.

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Message Attributes

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Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
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Document Unique ID: 00
Drafter: n/a
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Litigation Codes:
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